

## **REAL ESTATE COMMISSION MEETING**

Heber M. Wells Building  
Second Floor - Room 210  
9:00 a.m.  
June 15, 2005

### **MINUTES**

#### STAFF MEMBERS PRESENT:

Dexter Bell, Division Director  
Mark Fagergren, Education/Licensing Director  
Jon Brown, Enforcement Director  
Shelley Wismer, Assistant Attorney General  
Renda Christensen, Board Secretary  
Dave Mecham, Investigator  
Craig Livingston, Investigator  
Amy Corak, Real Estate Education Secretary  
Amanda Orme, Mortgage Education Secretary

#### COMMISSION MEMBERS PRESENT:

Gage Froerer, Chair  
Dorothy Burnham, Vice Chair  
Bonnie Peretti, Commissioner  
H. Blaine Walker, Commissioner

#### GUESTS

Mary Blair, Franklin Covey  
Steve Jones, Franklin Covey  
Debra Lund, Franklin Covey  
Karen Post  
Kevin Swensen  
Linda Leavitt  
Curtis Bullock

The June 15, 2005, meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Gage Froerer conducting.

### **PLANNING AND ADMINISTRATIVE MATTERS**

#### Approval of Minutes

The April 20, 2005 minutes were reviewed and found corrections were needed. On page 3, there was reference to Commissioner Walker attending a legislative meeting. The minutes need to be corrected to show he was attending an NAR conference. Ms. Wismer said on page 2, the paragraph about CE audits needed a correction to read "The Division will file a formal petition against licensees who have failed the audit if they do not want to voluntarily settle the case by stipulation." Also, the sentence regarding false renewals should be corrected to read "She asked the Commission how

they feel about intentionally false renewals,..." The following sentence needs to be corrected to read "Ms. Wismer also brought up the second area of those who attempted to comply, but have taken the wrong courses, such as no Core Course." On page 3, the paragraph saying Ms. Wismer and Mr. Ferguson are concerned about the time frames, needs to be corrected to change the word "forms" to the word "rules in place." The minutes were approved as amended.

In the May 18, 2005 minutes the paragraph on page 4 starting "Ms. Wismer said there were two rule drafts.." The sentence should read "R162-2-1, Qualifications for Licensure and Exam Application, would say an applicant for a sales agent license must have..." The minutes were approved as amended.

## **DIVISION REPORTS**

### INVESTIGATIONS REPORT – Jon Brown

Mr. Brown said in May, 42 written complaints were logged, 26 new cases were opened for investigation, 20 cases were closed, leaving the number of open cases at 255. Of the 42 complaints logged, 14 were CE audit investigations. The number of open cases shows 255, but 57 of these are CE audit investigations.

Commissioner Walker asked what the fines were on the CE audits. Mr. Brown said it was agreed by the Commission and the Division to charge \$500 for not having the Core Course, and \$100 for each credit hour not taken. If someone wants to challenge the punishment instead of signing the stipulation, they will be going before the Administrative Law Judge, not the Commission. If the case goes before the Judge, the fines could be increased up to \$3,000. Mr. Brown said on another note that there will eventually be a special site on the website just for sanctions. Mr. Bullock, from the UAR, said they will post warnings that the ethics course is not the core course.

Mr. Brown introduced Craig Livingston, the new investigator, to the Commission. He said the Division will have another employee on June 28<sup>th</sup>, when another investigator will join the staff.

### DIRECTOR'S REPORT – Dexter Bell

The Governor's office has asked this department and each of its divisions to answer a survey on the impact our licensees have on the economy. The UAR, appraisers, and mortgage people have responded with their answers to Director Bell.

Director Bell said he spoke to the Park City Board of Realtors. Present were experts from Whistler, BC, and Telluride, CO. The average client in these resort areas has a high net worth, with an average age of 50 years, and with children leaving or gone from the home. Commissioner Peretti said Jackson Hole, WY, has the same statistics.

Dave Johnson and the Park City Board are working on a disclosure and consent form about simultaneous closings.

Director Bell said the recent meeting on TIC's was very positive. He handed out to the Commission a summary document showing TIC Rules Under Consideration that the TIC Rules working group is considering. There are three areas about which the sponsor shall disclose: the real property, asset and property managers, and the general market. The working group reviewed the previous proposals and fine tuned them. The document broke the areas down to guiding principles, fundamental concepts, and basic rules under consideration. Commissioner Walker mentioned there still needs to be much work done on the master lease restrictions. Director Bell said the group will be meeting again in two weeks.

Director Bell said the Division intends to attend the ARELLO convention and would also like a Commissioner to attend. He handed out an agenda for review and said there were 13 good subjects and the session has a lot to offer the attendees. Commissioner Walker said he would be attending at NAR expense because he is on its TIC Committee. Director Bell said he, Mr. Fagergren, Ms. Christensen, would be attending, and he would like Commissioner Jensen to also attend. He instructed Ms. Christensen to fax the agenda over to Commissioner Jensen's office so when she returns from her trip, the information will be there for her to review.

Director Bell said the Division needs to purchase some equipment out of the Education Fund. The Fund's authorizing legislation would permit the purchases. He handed out a list of proposed equipment purchases for the Commission to review which totals approximately \$12,800. After discussing the list, the Commission gave its approval for the purchases.

Director Bell brought up solicitation licenses. SB283 amended the Utah code to say the fees the Division charges a broker for their license for conducting business in the state are all that may be charged, except that a principal broker may be charged a business license in the locality where he has his main office. Director Bell said one locality is trying to charge a solicitation license because sales agents knock on doors. He wrote a letter to the Board of Realtors at the city in question stating the Division statute requires a real estate license in order to approach people to procure prospective sellers or buyers of real estate, and this is why they must be licensed with the Division and the fee for that license is all that may be charged.

Director Bell has issued a delegation and signed it on June 14, 2005, which states the presiding officer for post-revocation hearings on criminal backgrounds will be the Division, not the Commission. The effective date is August 18, 2005. Director Bell said the paperwork has been started for the TIC investigator to be hired, and he plans to have this person be the hearing officer for some of these revocation hearings, if possible.

A new board member has been decided on by the Governor's office, and will be in place by the August Commission meeting. The Senate will vote on the person in July, so Chair Froerer will serve one month over his four years.

Commissioner Burnham asked if anyone had seen the column written by Paul Rolly in The Salt Lake Tribune on June 13, 2005. The article was about "Realty agents having lawmaker cronies at expense of homeowners." She asked Mr. Bullock if the UAR had responded to the article. Commissioner Walker said Mr. Rolly was getting misinformation and quoting the wrong sources.

Commissioner Walker said the Governor had established a Regulatory Review Commission, and he has been asked to serve on it. He said one of the things presented as a concern was money coming into the Division through renewal fees, when the money not being used by the Division is going into the General Fund. He said there was a consensus the fees should either be lowered or the money needs to stay within the Division to handle the Division's needs. Director Bell said the Division will generate approximately \$2,000,000 by the end of the year, and our actual working budget is approximately \$1,300,000. This means the Division provides in an excess of \$700,000 to the General Fund this year.

#### EDUCATION/LICENSING REPORT – Mark Fagergren

Mr. Fagergren said several people from Franklin Covey are present today: Steve Jones, Mary Blair, and Debra Lund. They have submitted a course for approval to the Division. However, the rules specifically states that courses on time management, stress management, dress for success, etc. are not acceptable. Mr. Fagergren said if there ever was a course that would make the Commission change the rule, it would be this course on professional time management. Franklin Covey gave a brief presentation covering the contents of their course.

Mr. Fagergren said the Division has a new receptionist, Chantell Gaitan, and will also have a new Mortgage Licensee Technician starting next week. This should help with the volume of licensing work being done.

Mr. Fagergren said last month rulemaking had been initiated to modify Administrative Rule R162-2. Rule 162-2.1.4.1(b) was erroneously removed by this proposed rule. This inadvertent error was corrected. The Commission voted to retract the erroneous version from the rulemaking process and replace it with the corrected version.

Mr. Fagergren said last month the Commission delayed voting on a rule for approving CE courses, with a couple of exceptions. This was the "backdoor loophole" rule. Ms. Wismer referred to the draft copy of Rule 162.9.2, Education Providers. A motion was passed and approved to start the rulemaking process.

#### OTHER BUSINESS

Ms. Wismer said Chair Froerer asked for a rule that addressed the duty to inform what had happened after an offer was presented. She handed out a draft of Rule 162.6.2.7.1, Duty to inform other party's agent. The rule requires agents to respond to offers and counter offers within the time frames set forth in the REPC. The Commission would like to have the term "client" changed to "principal." The motion was passed to start the rule into rule making process, as amended.

LICENSING HEARINGS

- 10:42        Todd Sitton – Application for License  
                 Don Sitton, Father  
                 Sarah Sitton, Wife
- 11:00        Kevin Brockbank – Application for License
- 11:40        Matthew Lewis – Application for License  
                 Rick Lewis, Father  
                 Rachel Lewis, Wife

Review of Criminal Convictions List for Commission Consideration:

Cyril Anderson  
Scott Andrews  
Eduardo Castillo  
Li Chen  
Thomas Cherry  
Jon Christianson  
Paul Dyche  
Matthew Engle  
Robert Foote  
Nathine Garner  
Terry Gleave  
Robert Gressman  
Ian Gustaveson  
Michael Harris  
Cathleen Hart  
Matt James  
Boudicca Joseph  
David Justin  
Jon K. Miller  
Mathew Montoya  
Lesa Moree  
Devan Partridge  
Karen J. Peavler  
Matthew Peterson  
Andrew Phipps  
Jeff Richardson  
Travis Shepherd  
Timothy Tad  
Brad Thurber  
Derrell White

A motion to go into Executive Session was passed, and was held from 12:25 p.m. to 1:30 p.m. This was a working lunch.

- 1:00 Grieg Morrison – Application for License  
Did not appear
- 1:35 Kellie Roring – Application for License  
Mike Roring, Husband
- 2:13 Bryan Berry – Application for License  
Becky Berry, Wife

A motion to go into a second Executive Session was made and held from 2:50 p.m. to 3:12 p.m.

#### RESULTS OF EXECUTIVE SESSION

##### Informal Hearings:

- Todd Sitton – Denied  
Kevin Brockbank – Denied  
Matthew Lewis – Approved on probation  
Grieg Morrison – He has been allowed to reschedule.  
Kellie Roring – Approved on probation  
Bryan Berry - Denied

##### Stipulations:

- Susan E. Atencio - Approved  
Cheryl A. Raines - Approved  
Ronald S. Franzman - Denied  
Bryan B. Ackerman - Approved

##### Criminal Convictions List:

- Cyril Anderson – Schedule for hearing  
Scott Andrews - Approved  
Eduardo Castillo - Approved  
Li Chen - Approved  
Thomas Cherry - Approved  
Jon Christianson - Approved  
Paul Dyche – Schedule for hearing  
Matthew Engle - Approved  
Robert Foote - Approved  
Nathine Garner - Approved  
Terry Gleave - Approved  
Robert Gressman - Approved  
Ian Gustaveson - Approved  
Michael Harris – Schedule for hearing  
Cathleen Hart – Approved  
Matt James - Approved  
Boudicca Joseph – Schedule for hearing

David Justin – Schedule for hearing  
Jon K. Miller - Approved  
Mathew Montoya - Approved  
Lesa Moree - Approved  
Devan Partridge - Approved  
Karen J. Peavler – Schedule for hearing  
Matthew Peterson - Approved  
Andrew Phipps - Approved  
Jeff Richardson - Approved  
Travis Shepherd - Approved  
Timothy Tad - Approved  
Brad Thurber - Approved  
Derrell White - Approved

OTHER BUSINESS

The Commission agreed to amend Rule 162-9.3.3.2 to allow for a course on customer relation skills, professional development, and communications. They would like to see a draft rule showing the changes.

The Commission would like to see a mandatory minimum of \$500 on stipulations.

A motion was made and accepted to adjourn the meeting at 3:20 p.m.